

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEVIN LEE MCCULLOM,

Petitioner,

v.

GREGORY J. AHERN,

Respondent.

Case No. [21-cv-02515-HSG](#)

**ORDER GRANTING EXTENSION OF  
TIME TO PAY FILING FEE OR TO  
FILE APPLICATION TO PROCEED IN  
FORMA PAUPERIS**

Petitioner, a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup> On April 7, 2021, the Court informed Petitioner that this action was deficient because Petitioner had failed to pay the \$5.00 filing fee or file an application to proceed *in forma pauperis*. Dkt. No. 2. Petitioner was instructed to, by May 5, 2021, either pay the \$5.00 filing fee or file an application to proceed *in forma pauperis*, and that failure to do so would result in this action being dismissed without further notice. Dkt. No. 2.

On April 30, 2021, Petitioner filed a letter with the Court, alleging that officials at Santa Rita Jail have removed his certificate of funds in trust account statement from his mailings to the Court. Dkt. No. 7. In light of this allegation, the Court *sua sponte* grants Petitioner an extension of time to either pay the filing fee or file an *in forma pauperis* application. By **June 21, 2021**, Petitioner shall either pay the \$5.00 filing fee or file an application to proceed *in forma pauperis*. Regardless of whether prison officials provide Petitioner with the certificate of funds in trust

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<sup>1</sup> The Clerk of the Court is directed to substitute Alameda County Sheriff Gregory Ahern in place of the previously named respondent because Sheriff Ahern is Petitioner's current custodian. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir.), *as amended* (May 8, 1996) (rules governing relief under 28 U.S.C. § 2254 require person in custody pursuant to judgment of state court to name state officer having custody of him as respondent); *Stanley v. Cal. Sup. Ct.*, 21 F.3d 359, 360 (9th Cir. 1994) (respondent in habeas petition typically is warden of facility in which petitioner is incarcerated).

1 account or whether prison officials mail the certificate of funds to the Court, Petitioner is still  
2 responsible for filing an *in forma pauperis* application, even if it lacks the certificate of funds  
3 statement. The Court notes that Petitioner has not yet filed an application to proceed *in forma*  
4 *pauperis*.

5 For the reasons set forth above, the Court orders as follows.

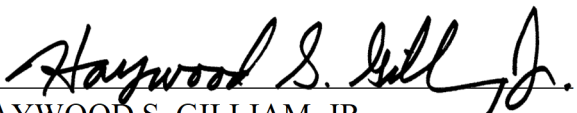
6 1. The Clerk of the Court is directed to substitute Alameda County Sheriff Gregory  
7 Ahern in place of the previously named respondent.

8 2. By **June 21, 2021**, Petitioner shall either pay the \$5.00 filing fee or file an  
9 application to proceed *in forma pauperis*. The Clerk shall include two copies of the Court's *in*  
10 *forma pauperis* application with this order.

11 3. The Court requests that Santa Rita Jail officials assist Petitioner in preparing the  
12 necessary supporting materials to complete his *in forma pauperis* application. The Clerk shall  
13 send a courtesy copy of this order to the litigation coordinator at Santa Rita Jail, 5325 Broder  
14 Blvd., Dublin, CA 94568-3309.

15 **IT IS SO ORDERED.**

16 Dated: May 14, 2021

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18 HAYWOOD S. GILLIAM, JR.  
19 United States District Judge  
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